

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF MISSOURI

3  
4 THE UNITED STATES OF AMERICA,  
5 Plaintiff,

6 vs. No. 4:09-CR-360 CDP

7 JAMES VERNON JOSEPH, JR.,  
8 Defendant.

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10 PRESENT: The Honorable Catherine D. Perry, Presiding  
11 ATTORNEY FOR PLAINTIFF: Howard J. Marcus, Assistant United  
12 States Attorney  
13 ATTORNEY FOR DEFENDANT: Joel J. Schwartz

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17 Change of Plea Hearing

18 July 30, 2009

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TERI HANOLD HOPWOOD, RMR, CRR  
Thomas F. Eagleton Courthouse  
111 South Tenth Street  
St. Louis, MO 63102

1                   THE COURT: We're here in the case of United States  
2 of America versus James Vernon Joseph, Junior, Case Number  
3 4:09-CR-360. Mr. Joseph is here in person and with his  
4 attorney, Mr. Schwartz, and the Government is here through Mr.  
5 Marcus.

6                   Mr. Joseph, the lawyers tell me you intend to plead  
7 guilty to an indictment that's been brought against you. Is  
8 that why you're here today?

9                   THE DEFENDANT: Yes, Your Honor.

10                  THE COURT: Before I accept your guilty plea, I'm  
11 going to ask you some questions, and I'm going to have you  
12 placed under oath before I ask you those questions. Once you  
13 have sworn to tell the truth, your answers to my questions are  
14 subject to the penalties of perjury. Do you understand that?

15                  THE DEFENDANT: Yes, Your Honor.

16                  THE COURT: Swear the defendant.

17                               JAMES VERNON JOSEPH, JR.,

18                   having been duly sworn, testified as follows:

19                                       EXAMINATION

20 BY THE COURT:

21 Q. Would you state your full name, please?

22 A. James Joseph. James Vernon Joseph, Junior.

23 Q. Is that your actual name?

24 A. Yes.

25 Q. How old are you, sir?

1 A. I'll be 45 in August, August 28th. I'm 44.

2 Q. How far did you go in school?

3 A. Eleventh grade.

4 Q. Do you have a GED?

5 A. No, I was going to take the GED program once I got all the  
6 proceedings taken care of.

7 Q. Do you read and write?

8 A. Yes.

9 Q. Are you currently under the care of a doctor or  
10 psychiatrist for any reason?

11 A. No.

12 Q. Do you take any medicines on a regular basis?

13 A. No.

14 Q. Within the last 24 hours, have you taken any medicines or  
15 drugs or drunk any alcohol?

16 A. No, Your Honor.

17 THE COURT: Does either counsel have any doubts as  
18 to the defendant's competence to proceed?

19 MR. MARCUS: No.

20 MR. SCHWARTZ: No.

21 Q. (By the Court) Mr. Joseph, you're charged in a one-count  
22 indictment, and the Grand Jury charged on or about May the 5th,  
23 2009, in Bridgeton, Missouri, in this district, that you  
24 knowingly possessed with intent to unlawfully use five or more  
25 false identification documents, and that this affected

1 interstate commerce. Do you understand that that is what you  
2 are charged with?

3 A. Yes, Your Honor.

4 Q. This is a felony, and you are entitled to be represented by  
5 counsel at all stages of the proceedings, and if you can't  
6 afford a lawyer, one will be appointed for you.

7 You are here today with Mr. Schwartz. Have you had  
8 enough time to discuss your case with him?

9 A. Yes, Your Honor.

10 Q. Are you satisfied with his representation of you?

11 A. Yes, Your Honor.

12 Q. Is there anything you've wanted him to do in representing  
13 you that he has failed or refused to do?

14 A. No, Your Honor.

15 Q. Let me tell you the rights would you have if you went to  
16 trial. You do not have to plead guilty. You have a right to  
17 plead not guilty and go to trial. You'll be giving up that  
18 right if you plead guilty here today. Do you understand that  
19 if you plead not guilty, you would be entitled to a speedy and  
20 a public trial by a judge or a jury?

21 A. Yes, Your Honor.

22 Q. And at trial, if you went to trial, you would be presumed  
23 innocent, and the Government would have to prove you guilty by  
24 competent evidence and beyond a reasonable doubt. You would  
25 not have to prove that you were innocent. It would be the

1 Government's burden to try to prove that you were guilty, and  
2 they would try to do that by bringing in witnesses who would  
3 testify in your presence. You could hear what the witnesses  
4 against you had to say. Your attorney could cross-examine the  
5 Government's witnesses, and could object to the Government's  
6 evidence, and your attorney could offer evidence and subpoena  
7 witnesses on your behalf.

8           You could testify at a trial if you wanted to, but you  
9 would not have to. If you decided not to testify, there  
10 couldn't be any suggestion made to the jury or any inference  
11 drawn by them that you were guilty because you didn't take the  
12 stand.

13           So those are the things that would happen if you pleaded  
14 not guilty and went to trial. Do you understand those rights?

15 A. Yes, Your Honor.

16 Q. Do you understand that if you plead guilty here today,  
17 you'll be waiving your right to trial and the other rights I've  
18 just described?

19 A. Yes, Your Honor.

20 Q. In other words, there won't be any trial. Judgment of  
21 guilty will be entered on this plea just the same as if you had  
22 been convicted by a jury. Do you understand that?

23 A. Yes, Your Honor.

24 Q. Has anyone threatened you or forced you in any way to get  
25 you to plead guilty?

1 A. No, Your Honor.

2 Q. The lawyers have given me a document called Plea Agreement,  
3 Guidelines Recommendations, and Stipulations. Do you have a  
4 copy of that there in front of you?

5 A. Yes, Your Honor.

6 Q. It's got your name on the front, and over on the last page,  
7 which is page 15, there are three signatures. Mr. Marcus, the  
8 prosecutor, signed up at the top, and Mr. Schwartz, your  
9 lawyer, signed at the bottom, and there's a signature in the  
10 middle above where your name is typed. Is that your signature?

11 A. Yes, Your Honor.

12 Q. Did you sign this document here today?

13 A. Yes, Your Honor.

14 Q. Did you read it and discuss it with your lawyer before you  
15 signed it?

16 A. Yes, Your Honor.

17 Q. Is everything in this document true to the best of your  
18 knowledge and understanding?

19 A. Yes, Your Honor.

20 Q. Is there anything in this document that you disagree with  
21 or you don't understand?

22 A. No, Your Honor.

23 Q. Have there been any other promises made to you to get you  
24 to plead guilty, or agreements entered into with you about your  
25 guilty plea that aren't written down in this document?

1 A. No, Your Honor.

2 Q. I want to turn over to page -- it starts at the bottom of  
3 page 9, the heading is there, and talking about the elements of  
4 the offense, but the elements are really listed on page 10.  
5 Elements of the offense means the things the Government would  
6 have to prove in order for you to be guilty of this crime.

7 In this case, those things are that you possessed five  
8 or more false identification documents, that you did that  
9 knowingly and willfully with the intent to use those documents  
10 unlawfully, and that your possession of those identification  
11 documents was in or affecting commerce.

12 Now, the maximum penalty for this is imprisonment of not  
13 more than 20 years, a fine of not more than \$250,000, or both  
14 imprisonment and a fine, and there is a period of supervised  
15 release of not more than three years. There is also a \$100  
16 mandatory special assessment, and restitution would be required  
17 if there is known loss. So do you understand the maximum  
18 penalties you are facing in this case?

19 A. Yes, Your Honor.

20 Q. Now, the sentence will also be affected by the Sentencing  
21 Guidelines. The Guidelines are a set of rules that apply  
22 points to different things, and when we apply the Guidelines to  
23 your case, we end up with a result that's called the Sentencing  
24 Guidelines range, and that's the range of jail time that the  
25 Guidelines are recommending in your case.

1           The Guidelines have listed in them some things called  
2     departures. Those are specific reasons listed in the  
3     Guidelines that I could give you either a higher or a lower  
4     sentence.

5           The Guidelines are an advisory system, and what that  
6     means is I do not have to follow recommendations of the  
7     Guidelines. What I do have to do is figure out what the  
8     Guidelines recommend, then determine whether you're eligible  
9     for any departures for the reasons listed in the Guidelines,  
10    and then I'm allowed to consider other facts about you and your  
11    crime and the purposes of sentencing in order to achieve a just  
12    sentence.

13          To help me do all that, we'll have a Presentence Report  
14    prepared by the Probation Office, and the Presentence Report  
15    will have a lot of information about you and your background  
16    and the crime in this case. It will also have a section where  
17    the probation office will calculate the Sentencing Guidelines.  
18    You and your lawyer and the Government lawyer will get copies  
19    of the Presentence Report before sentencing, and both sides  
20    have a right to object to the Presentence Report if they think  
21    anything in there is incorrect, and you should object if you  
22    think there is anything in there that's wrong.

23          I will not sentence you until I have reviewed the  
24    Presentence Report, have ruled on any objections that either  
25    side might file, and then I also have heard anything you wish



1 to say at the time of sentencing. So those are all the things  
2 that go into the sentencing process. Do you understand  
3 generally how that works?

4 A. Yes, Your Honor.

5 Q. Do you understand that I don't know enough about you or  
6 your case at this point to know what your sentence will be, and  
7 I'm not promising you any particular sentence or any particular  
8 Guidelines? You understand that?

9 A. Yes, Your Honor.

10 Q. All right. Let's go through the plea agreement beginning  
11 on page 2 at the top. On the top it says in exchange for your  
12 guilty plea to this indictment, the Federal Government is  
13 agreeing not to bring any other prosecution in this district  
14 related to your fraud with identification documents, or with  
15 regard to your transporting of women, adult females for the  
16 purpose of prostitution between May 4, or the time period May 4  
17 and May 5 of 2009 if it's something they have already agreed --  
18 already know about. So, in exchange for your guilty plea, they  
19 are agreeing not to bring any other federal charges in this  
20 district against you. Do you understand that?

21 A. Yes, Your Honor.

22 Q. Now, it says at the bottom you all have made some  
23 recommendations to me about the Sentencing Guidelines, and that  
24 you're asking me to follow these recommendations, and you're  
25 saying that neither side is going to ask for a sentence outside

1 the Sentencing Guidelines range that results from these  
2 recommendations. So do you understand you're agreeing to that?

3 A. Yes, Your Honor.

4 Q. On page 3, there is a waiver of post-conviction rights, and  
5 this is a very important part of your plea agreement. Whenever  
6 someone pleads guilty, they are giving up the right to appeal  
7 whether they are guilty or not, and anything that's happened up  
8 until this point. That just happens automatically when you  
9 plead guilty, you can't plead guilty and then go back and  
10 challenge something that's already happened in the case. Do  
11 you understand that?

12 A. Yes.

13 Q. In this case, however, in addition, you and the Government  
14 are both giving up the right to appeal your sentence, because  
15 even though you plead guilty, if you didn't have this provision  
16 of your plea agreement, then you could either -- you or the  
17 Government could appeal the sentence in the case. In this  
18 case, what you're saying is as long as I follow the  
19 recommendations you've made in here, and I sentence you within  
20 the Sentencing Guidelines range that results from those  
21 recommendations, then both you and the Government are giving up  
22 your right to appeal the sentence. So do you understand that  
23 you're giving up that right?

24 A. Yes, Your Honor.

25 Q. You're also giving up your right to file a habeas corpus or

1 a post-conviction motion. That's a motion where you would come  
2 back to me later and say you thought your rights had been  
3 violated, and you're giving up the right to do that unless you  
4 later find out something that you believe is prosecutorial  
5 misconduct or ineffective assistance of counsel. Do you  
6 understand that?

7 A. Yes, Your Honor.

8 Q. Now, on page 4 it also says that you understand you're  
9 giving up your right to object to any request for records or  
10 information that might be sought under any federal law from the  
11 Government. In other words, if the United States agencies  
12 should receive a Freedom of Information Act request or any  
13 other request for information, you are giving up your right to  
14 object to the provision of information. Do you understand  
15 that?

16 A. I'm not quite sure.

17 THE COURT: I'm looking at it and wondering, too,  
18 because I haven't seen it before, Mr. Marcus. Do you want to  
19 tell me the intent of that provision on page 4, the right to  
20 records?

21 MR. MARCUS: It waives his right to seek records  
22 under the Freedom of Information Act from the Government  
23 relative to this case.

24 THE COURT: It waives his right to seek that. I  
25 said that wrong. I apologize, Mr. Joseph. What it says is

1     that you're agreeing that you will not seek any records about  
2     this case from the Government. In other words, you won't come  
3     and say, "I want to see all the police reports or the other  
4     records in the case, whatever they might be." Do you  
5     understand that?

6     A. Yes, Your Honor.

7                 MR. SCHWARTZ: Can I have one second with him? I  
8     want to explain why it's there.

9                 THE COURT: Why is it there?

10                MR. SCHWARTZ: Your Honor --

11                MR. MARCUS: My understanding, from our perspective,  
12     it's something new that has been inserted in pleas, and it has  
13     to do with the cost and the effort and production of documents.  
14     This is my opinion of why they have included it, because it  
15     usually involves bringing things back from archives, the  
16     expense of copying and transporting all these documents again.

17                MR. SCHWARTZ: My impression why it was there in  
18     this case, and I did not talk to Mr. Marcus about it, but I  
19     thought it had to do with the specific nature of this case.

20                THE COURT: I assumed it did, too.

21                MR. SCHWARTZ: But we don't have an objection to it.

22                MR. MARCUS: It doesn't in terms of he's got  
23     discovery and all the materials in any event.

24                THE COURT: So let me make clear, though, that I  
25     understand that Mr. Schwartz, you did receive the Government's

1 discovery in this case, and you had time to discuss that with  
2 Mr. Joseph, correct?

3 MR. SCHWARTZ: That is correct.

4 Q. (By the Court) Mr. Joseph, you're satisfied that you've  
5 seen the discoverable information in this case, so you know  
6 basically at least somewhat the evidence the Government had  
7 against you and have discussed that with Mr. Schwartz?

8 A. Yes, Your Honor.

9 Q. Okay. So, in doing it, in including this, you're simply  
10 giving up your right to ask -- file a Freedom of Information  
11 Act or privacy act request in the future. Do you understand  
12 that?

13 A. Yes, Your Honor.

14 Q. Okay. And then it goes on to say you'll provide certain  
15 information to the Government, or to the Probation Office, and  
16 they can share that with the Government lawyers, and then on  
17 page 5, it says that you understand nothing in this document  
18 limits the rights of the Government to take civil, tax,  
19 administrative, or forfeiture action against you if they  
20 thought they had the right to do so, and specifically, that you  
21 agree to forfeit any property that might have been seized by  
22 the Government during their investigation, and that would  
23 include specifically \$7,442.98 in currency that was seized by  
24 law enforcement during the investigation, but it would include  
25 any other property that they might have taken.

1           MR. MARCUS: If I can clarify that on page 6, the  
2 defendant has asked that we return his photography equipment,  
3 his cameras, personal videos, and DVDs, and we had agreed not  
4 to forfeit those items.

5           THE COURT: You're agreeing to turn those back over  
6 to him except to the extent they included illegal things?

7           MR. MARCUS: Exactly.

8           THE COURT: So they are agreeing to turn that back  
9 over to you, but what is listed in here is camera, photography  
10 and equipment, and personal videos, and DVDs, but other than  
11 that, you're giving up your right to receive any property back.  
12 Do you understand that?

13 A. Yes, Your Honor.

14 Q. At the bottom of page 6 is the section where you have made  
15 the recommendations you're making to me about the Sentencing  
16 Guidelines, and the heading on that says, "Guidelines  
17 recommendations not binding on the Court," and what that "not  
18 binding on the Court" means is that I don't have to follow  
19 these recommendations if I decide they are not correct. I  
20 never promise to follow them at this stage. I have to wait  
21 until I get the Presentence Report to know whether I will  
22 follow these or not. If for some reason I don't follow them,  
23 you would not be able to withdraw your guilty plea and start  
24 all over again because I didn't follow these recommendations.  
25 Do you understand that?

1 A. Yes, Your Honor.

2 Q. Now, this says that you all are recommending that the base  
3 offense level in this case is a level 14 because you believe  
4 that the cross reference -- there is a cross reference that  
5 should apply, and then the Government is agreeing that you have  
6 accepted responsibility for your criminal conduct, so there  
7 will be two levels taken off. So you all are recommending to  
8 me that the total offense level in the case would be 12. So  
9 that's the recommendation you're making. Do you understand  
10 that?

11 A. Yes, Your Honor.

12 Q. And again, I need to review, especially with the cross  
13 reference, I don't know exactly how that works, but the  
14 probation office will reach a conclusion. When they provide  
15 the Presentence Report, if you or your lawyer thinks what they  
16 have concluded is incorrect, you can file objections, but  
17 otherwise, I will wait until I get the Presentence Report to  
18 review all of that. Do you understand that?

19 A. Yes, Your Honor.

20 Q. Okay. Now, the stipulation of facts that relates to the  
21 sentencing is on pages 8 and 9. Did you go over that carefully  
22 with your lawyer?

23 A. Yes, Your Honor.

24 Q. Do you agree that all the facts set out there are true and  
25 that's actually what happened in this case?

1 A. Yes, Your Honor.

2 Q. Okay. Now, with regard to -- it sets out the circumstances  
3 of what happened on May the 3rd, and then it says that on page  
4 9, it says that they recovered false identification documents,  
5 the police did, that had your photograph, and that those  
6 included a Nevada state identification card in the name of Gary  
7 Maurice Stalworth, a North Carolina driver's license in another  
8 name, a Costco card in the name of Gary Stalworth, Las Vegas  
9 Athletic Club card in the name of Gary Stalworth, a Visa debit  
10 card in the name of Gary Stalworth, a Las Vegas Metropolitan  
11 Police Department gun registration, but they didn't find a gun,  
12 and a birth certificate and Social Security card in the name of  
13 someone else, with initials of ANS, and it says that you agree  
14 that all of those were things you possessed, and that you agree  
15 you did not have authorization to possess those documents. Is  
16 that true?

17 A. Yes, Your Honor.

18 Q. And then it says that you agree that the possession of  
19 these documents did affect interstate commerce. Do you agree  
20 with that?

21 A. Yes, Your Honor.

22 Q. Let me see, and you knew you had those documents and  
23 intended to use them in some unlawful way, is that correct?

24 A. Yes, Your Honor.

25 THE COURT: Okay. Let me ask you this, Mr. Marcus.



1 Does that cover the elements of the offense?

2 MR. MARCUS: Yes, it does, Your Honor.

3 Q. (By the Court) Then on page 8, leading up to that, and  
4 under the stipulation of facts, you said this stuff was all  
5 true, Mr. Joseph, but I want to make sure that you agree that  
6 it is, this talks about what happened when the police came to  
7 the Crown Plaza in Bridgeton, and that there were some women  
8 there, and one woman in particular who advised that you had  
9 brought her from Dayton, Ohio for the purpose of prostitution,  
10 and also that you had taken some videos of her, and that you  
11 had kept her driver's license, and she had no money, so she  
12 couldn't leave, and basically you had Jane Doe, the person  
13 listed as Jane Doe I, as well as others, that you had brought  
14 her for the purpose of engaging in prostitution. And so that's  
15 listed here. It's not what you're charged with, but I want to  
16 make sure you understand when it's listed here it's here  
17 because I assume that's why the Government is recommending a  
18 cross reference in the Sentencing Guidelines, and this is  
19 something that can be -- if you're agreeing to it here, and  
20 you're telling me it's true, it's something that can be  
21 considered as part of the sentencing process. Do you  
22 understand that?

23 A. Yes.

24 Q. And you agree it's true?

25 MR. SCHWARTZ: Can I talk to him for a second?

1 Q. (By the Court) Mr. Joseph, do you agree that those facts  
2 are true?

3 A. Yes, Your Honor.

4 Q. And again, I don't know how the Sentencing Guidelines on  
5 this works, but I know given your admission, that means if the  
6 Guidelines do say I should consider that cross reference, then  
7 there is a factual basis for me to do so. So, anything further  
8 with regard to the case that I should be asking about?

9 MR. MARCUS: No, Your Honor.

10 THE COURT: Mr. Schwartz?

11 MR. SCHWARTZ: No, Your Honor.

12 Q. (By the Court) So, Mr. Joseph, in answering my questions  
13 here today under oath and signing this document, you have told  
14 me enough for me to accept your guilty plea to this charge of  
15 possession of false identification documents, but I have not  
16 done that yet. I want to make sure that we have gone through  
17 all your rights, and talked about the trial rights and  
18 everything else, the sentencing process, that you really do  
19 want to plead guilty instead of going to trial. Do you still  
20 want to plead guilty?

21 A. Yes, Your Honor.

22 Q. Is anybody forcing you or making you do this?

23 A. No, Your Honor.

24 Q. Then let me ask you formally and for the record how you  
25 plead to the charge set forth in the indictment, guilty or not

1 guilty?

2 A. Guilty.

3 THE COURT: All right. I will accept your guilty  
4 plea. I find that you are competent to enter this plea, you  
5 understand your rights, and you know what you're doing, and  
6 you're entering the plea voluntarily, and the plea has a  
7 factual basis that contains all the elements of the crime.

8 So, I will accept your guilty plea, and I will set your  
9 case for sentencing on Tuesday, October 20th at 1:00 p.m. Any  
10 objections to the Presentence Report will be due three weeks  
11 before, or September 21st, and any sentencing memorandum will  
12 be due one week before. So, October 20th at 1:00 p.m. for  
13 sentencing. Anything further?

14 MR. MARCUS: No, Your Honor.

15 MR. SCHWARTZ: Judge, you said is there anything  
16 else. I don't recall you going over his trial rights.

17 THE COURT: I wonder if I did. I think I did. Let  
18 me do this again, Mr. Joseph. You understand that if you went  
19 to trial, you would be presumed innocent and the Government  
20 would have the burden of proving you guilty. Do you understand  
21 that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And also the Government would bring in  
24 witnesses, and you would hear what they had to say, and your  
25 attorney could cross-examine them. In other words, you would

1 have the right to confront the witnesses, and your lawyer could  
2 subpoena witnesses and put on evidence on your behalf if you  
3 went to trial. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Additionally, you wouldn't have to  
6 testify at a trial. You have a right, a privilege against  
7 self-incrimination, and also there is no burden on a defendant  
8 to prove anything in a criminal trial, so you wouldn't have to  
9 testify, and you couldn't -- no one could tell the jury that  
10 there was anything -- that they could draw any inference or  
11 suggest to the jury that you were guilty because you did not  
12 take the stand if you did not testify. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right, you understand when you plead  
15 guilty here today, you are giving up your right to a jury trial  
16 or a bench trial. You're giving up all rights to trial in the  
17 case.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. In case I didn't, because I might  
20 not have. All right. Then the defendant is remanded to the  
21 custody of the marshals pending the sentencing on October 20th  
22 at 1:00 p.m.

23 (A recess was taken.)

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REPORTER'S CERTIFICATE

I, TERI HANOLD HOPWOOD, RMR, CRR, Official Court  
Reporter for the United States District Court for the Eastern  
District of Missouri do hereby certify that the foregoing is a  
true and correct transcript of the proceedings had in this  
cause as same appears from my stenotype notes made personally  
during the progress of said proceedings.

/S/ Teri Hanold Hopwood, RMR, CRR

TERI HANOLD HOPWOOD, RMR, CRR

Official Court Reporter